

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NOSIRRAH MANAGEMENT, LLC, A
DELAWARE LIMITED LIABILITY
COMPANY, MARK RUBENSTEIN, AND
CALENTURE, LLC, A NEW YORK
LIMITED LIABILITY COMPANY,**

Plaintiffs,

- against –

SILVERSUN TECHNOLOGIES, INC.

Nominal Defendant,

- and –

**AULT GLOBAL HOLDINGS, INC., AND
DIGITAL POWER LENDING, LLC,
Defendants.**

Case No. 1:21-cv-08256

**COMPLAINT FOR RECOVERY OF
SHORT-SWING PROFITS UNDER
15 U.S.C. § 78p(b) [SECTION 16(b)
OF THE SECURITIES EXCHANGE
ACT OF 1934, *AS AMENDED*]**

Jury Trial Demanded

Plaintiffs, by their attorneys, allege upon knowledge of their own acts, and upon information and belief as to the acts of others, as follows:

1. This is an action to recover “short-swing” profits under Section 16(b) of the Securities Exchange Act of 1934, as amended (the “1934 Act”), 15 U.S.C. § 78p(b) (“Section 16(b)”).

JURISDICTION AND VENUE

2. This Court has jurisdiction under Section 27 of the 1934 Act, 15 U.S.C. § 78aa.

3. Venue is proper in this district because some of the transactions giving rise to liability as alleged herein occurred or were executed on exchanges and/or through market-makers located in New York, New York.

PARTIES

4. Plaintiffs Nossirah Management, LLC, a Delaware limited liability company, Mark Rubenstein, a resident of Rhode Island, and Calenture, LLC, a New York limited liability

company, are each shareholders of Nominal Defendant SilverSun Technologies, Inc. (“SilverSun”).

5. Upon information and belief, Nominal Defendant SilverSun is a Delaware corporation having a principal place of business at 120 Eagle Rock Ave, East Hanover, New Jersey 07936. This action is brought in the right and for the benefit of SilverSun, which is named as a defendant solely to bring all necessary parties before the Court.

6. Upon information and belief, Defendant Digital Power Lending, LLC (“DPL”) is a California limited liability company with principal executive offices at 201 Shipyard Way, Suite E, Newport Beach, California 92663, and is wholly owned and controlled by Defendant Ault Global Holdings, Inc. (“Ault Global”), which is a Delaware corporation with principal executive offices at 11411 Southern Highlands Parkway, Suite 240, Las Vegas, Nevada, 89141. DPL and Ault Global will be referred to herein collectively as the “Ault Defendants.”

7. Upon information and belief, and based on a Form 13D filed with the Securities and Exchange Commission (“SEC”) as of April 28, 2021, at all relevant times each of the Ault Defendants owned in excess of 10% of the common stock of SilverSun and was therefore a statutory “insider” subject to the short-swing profits provisions of Section 16(b).

FACTS

8. At all times relevant, the common stock of SilverSun was registered under Section 12(b) of the 1934 Act and was traded on the NASDAQ Capital Market, a national securities exchange located within this district.

9. On information and belief, one or more of the transactions to be described herein were conducted on the NASDAQ Capital Market.

10. Ault Global filed multiple Form 4's ("Statement of Changes in Beneficial Ownership") with the SEC reporting numerous transactions in the common stock of SilverSun by the Ault Defendants from May 3, 2021 to August 25, 2021. The following charts summarize a subset of these transactions, specifically purchases by the Ault Defendants of a total of 169,000 shares of common stock of SilverSun and sales of 61,000 shares, which yielded short-swing profits of at least \$310,310, on the basis of matching lowest priced purchases and highest priced sales (prices per share have been rounded to the nearest cent):

Matched Transactions

Transaction Date	Transaction	No. Shares Purchased or Sold	Price/Share
May 13, 2021	Purchase	1,000	\$6.33
May 14, 2021	Purchase	17,500	\$6.64
May 19, 2021	Purchase	3,500	\$6.44
June 16, 2021	Purchase	142,000	\$6.78
June 22, 2021	Sale	6,000	\$10.44
June 28, 2021	Sale	52,000	\$12.14
July 19, 2021	Sale	3,000	\$8.56
Aug. 17, 2021	Purchase	5,000	\$6.74

Matching Steps

	Matched Purchase Date	Purch. Price	Matched Sale Date	Sale Price	No. Shares Matched	Profit from Match	Profit Subtotal
1.	May 13, 2021	\$6.33	June 28, 2021	\$12.14	1,000	\$5,810.00	\$5,810
2.	May 19, 2021	\$6.44	June 28, 2021	\$12.14	17,550	\$96,250	\$102,060
3.	May 14, 2021	\$6.64	June 28, 2021	\$12.14	3,500	\$19,950	\$122,010
4.	Aug. 17, 2021	\$6.74	June 28, 2021	\$12.14	5,000	\$27,000	\$149,010
5.	June 16, 2021	\$6.78	June 28, 2021	\$12.14	25,000	\$134,000	\$283,010
6.	June 16, 2021	\$6.78	June 22, 2021	\$10.44	6,000	\$21,960.00	\$304,970
7.	June 16, 2021	\$6.78	July 19, 2021	\$8.56	3,000	\$5,340.00	\$310,310

11. There are no exemptions from Section 16(b) that apply to any of the transactions, securities or persons noted above.

12. Demand for prosecution was made on SilverSun by email to Mark Meller, president of SilverSun and other officials and representatives of SilverSun, on June 23, 2021 and other dates, and as the amounts of short-swing profits mounted, these demands were updated.

On information and belief, two of those demands were transmitted by Joseph Lucosky of Lucosky Brockman LLP (“Lucosky”), counsel for SilverSun, to the Ault Defendants or to their counsel, Thomas Fleming of Olshan Frome Wolosky (“Fleming”).

13. Fleming responded by letter sent by email on August 13, 2021 to Lucosky, stating, “Our client rejects the demands and has no obligation to make any payments under the Statute.”

14. On information and belief, neither SilverSun nor Lucosky have taken or intend to take any further action to recover the short-swing profits under Section 16(b) from the Ault Defendants.

15. This action is brought more than sixty days after demand was first made on SilverSun, as required by Section 16(b), and to the extent that less than sixty days have elapsed since separate notices and demands were sent to SilverSun as the amounts of short-swing profits increased, Fleming’s letter and SilverSun’s inaction demonstrate that further delay in initiation of suit would be futile.

16. This action is brought within two years of the violations described in this Complaint or within two years of the time when the transactions were disclosed in SEC filings as required by Section 16(b).

CLAIM FOR RELIEF

(Recovery of Profits Under Section 16(b) of the
Securities Exchange Act of 1934, *as amended*, 15 U.S.C. § 78p(b))

17. Plaintiffs incorporate by this reference all of the allegations stated in the above paragraphs.

18. The Ault Defendants purchased and sold SilverSun common stock in which they had beneficial ownership and a pecuniary interest within a six-month period.

19. The Ault Defendants realized profits of no less than \$310,310 in connection with these purchases and sales.

20. By virtue of its holdings of Common Stock of SilverSun, each of the Ault Defendants was an insider subject to Section 16(b), at the time of the purchases and sales.

21. As of the date of this Complaint, the Ault Defendants have failed to account for and disgorge the entirety of their short-swing profits from May 3, 2021 through the August 17, 2021 sale despite Plaintiffs' demands.

22. As a result, each of the Ault Defendants is in breach of Section 16(b).

23. In the event that the Ault Defendants made other purchases and sales of SilverSun stock within the above or any other six-month period resulting in short-swing profits, such transactions are also a breach of Section 16(b) requiring disgorgement by them to SilverSun.

24. Through such purchases and sales or sales and purchases, the Ault Defendants realized profits the exact amounts of which are unknown to Plaintiffs, which inure to the benefit of, and are recoverable by, Plaintiffs on behalf of SilverSun.

PRAYER FOR RELIEF

Therefore, Plaintiffs pray for the following relief:

- A. Disgorgement of all short-swing profits realized in violation of Section 16(b), minus any disgorgement previously made;
- B. Pre-judgment and post-judgment interest on such monetary relief;
- C. The costs of bringing this suit, including reasonable attorney fees and expert witness fees; and
- D. All other relief to which Plaintiffs may be entitled at law or equity.

JURY TRIAL DEMAND

Pursuant to Fed. R. Civ. P. 38(b)(1) and (c), Plaintiffs hereby demand a jury trial on all the issues in this action so triable of right by a jury.

Dated: October 6, 2021

Respectfully submitted,

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